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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

February 6, 2002
AO-02-06

Thomas Holden, Campaign Manager
Sarah Cannon Holden Committee
P.O. Box 6202
Boston, MA 01773

Re: Depository Committee Expenditures

Dear Mr. Holden:

This letter is in response to your January 14, 2002 request for an opinion regarding the use of a Visa check card by a depository committee to make expenditures.

You have indicated that the Sarah Cannon Holden Committee was issued a Visa check card by its depository bank. The name on the card is "Treasurer." The bank advised you that it is a debit card for the Committee's campaign account and not a credit card.

QUESTION

May the Committee use the check card to make purchases in a manner consistent with the regulations for credit card expenditures?

RESPONSE

No. The law allowing political expenditures to be made with a credit card does not also authorize debit card expenditures.

Section 9 of the campaign finance law, M.G.L. c. 55, states in part that "[a] political committee may maintain and use a credit card ... in order to make expenditures for the purpose for which said committee was organized." A "credit card" is narrowly defined as "a card or plate issued by a bank or other credit institution for the purpose of obtaining goods or services on credit." See 970 CMR 2.09(1). And while the debit card you described may carry the "Visa" logo, it would not authorize a credit purchase but rather an electronic transfer of funds directly from the Committee's account to a

designated payee. In light of this, such a card would not qualify as a “credit card” for the purpose of the campaign finance law.

This conclusion is supported by state and federal consumer protection laws, which distinguish and regulate separately credit cards and credit transactions and debit cards, or “access cards” as they are called, which are deemed to be electronic fund transfers. See M.G.L. c. 140D, § 1 (Consumer Credit Cost Disclosure) and c. 167B, § 1 (Electronic Branches and Electronic Fund Transfers), and 15 U.S.C. § 1602 (Consumer Credit Cost Disclosure) and § 1693A (Electronic Fund Transfer Act).

This office recognizes that the use of debit cards, both Automated Teller Machine (“ATM”) cards and the “check cards” you have described, has become commonplace since the relevant portions of the campaign finance law were enacted. Like credit cards, these cards may be used by the general public to make payments at retail locations instead of using cash or a check. Moreover, debit transactions, especially ones using cards issued by companies such as Visa or MasterCard that do not require the use of a personal identification number, are processed in a manner that is virtually identical to a credit card transaction.

Despite all this, there is simply no basis in the existing law to allow a depository candidate or committee to make expenditures using a debit card unless they are paying for payroll or media services. See M.G.L. c. 55, § 19(c). Chapter 55 does not otherwise authorize electronic fund transfers by a political committee. See AO-95-22 (advising that monthly AOL charges should not be directly debited from a depository committee’s account). Moreover, the use of a debit card would run contrary to the strict rules for expenditures imposed on candidates in the depository reporting system. In particular, the requirement that expenditures exceeding \$50 must be by a check drawn on the depository account, which sets forth the purpose of the payment and contains a payee affidavit. See M.G.L. §§ 7 and 19(c).

In sum, the use of a Visa check card for expenditures by a depository candidate would not be consistent with the campaign finance law.

Thank you for your interest in the campaign finance law. Please do not hesitate to contact us if you have any questions regarding this or any other campaign finance matter.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:bp